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In the Supreme Court of the United States

OCTOBER TERM, 1955

PAUL DENNIS JOHNSTON, PETITIONER

v.

UNITED STATES OF AMERICA

JOHN SOBOL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES

SIMON E. SOBELOFF
Solicitor General
WARREN OLNEY III
Assistant Attorney General
BEATRICE ROSENBERG
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Department of Justice
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As petitioner states (Pet. 4), the decision in these cases is in direct conflict with that of the Court of Appeals for the Tenth Circuit in *United States* v. *Patteson*, decided January 19, 1956, in which the government is petitioning for a writ of certiorari.

In these cases, each of the defendants was indicted in the United States District Court for the Eastern District of Pennsylvania for knowingly neglecting to perform a duty imposed upon him pursuant to Section 6(j) of the Universal Military Training and Service Act to report for civilian work at a hospital in the Eastern District of Pennsylvania (R. 6-9).[1] Each had been classified I-O by a local draft board in the Western District of Pennsylvania where he resided, and each had, at the time he received the work assignment from his draft board, personally notified the board of his refusal to accept such employment (R. 12-15).

The district court dismissed the indictments for lack of venue (Pet. 25-27). The court of appeals reversed (Pet. 28-29), holding that the offense of failing and neglecting to report for civilian work took place in the district where the work was to be performed (Pet. 19-24). This is contrary to the holding of the Tenth Circuit in *Patteson* that a similar offense occurred in the district where the registrant notified his draft board of his refusal to accept such employment.

In view of the conflict, and for the reasons set forth in the Government's petition in the *Patteson* case, we believe that the issue should be resolved

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[1] The indictment against Johnston charged that he neglected to perform a duty in that "he failed and refused to obey an order" to report for civilian work (R. 8-9).

by this Court. We therefore do not oppose the grant of certiorari in these cases.

Respectfully submitted,

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FEBRUARY 1956.

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